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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(San Joaquin)

CITY OF STOCKTON,

Plaintiff and Respondent,

v.

JASWANT SINGH,

Defendant and Appellant.

C084142

(Super. Ct. No.
STKCVUMCP20160005206)

Appellant Jaswant Singh owned property in Stockton, California. Respondent City of Stockton (the city) sought an order to appoint a court receiver to rehabilitate Singh's property and bring it into compliance with the law. The trial court granted the city's receivership application and appointed a court receiver over the property. Singh appeals, contending the order is appealable and the court acted in excess of its jurisdiction and abused its discretion. Lacking jurisdiction to consider Singh's appeal, we shall dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Singh has owned the property in question since March 2004. The property consists of a commercial building, which Singh has leased to a tenant for the operation of a liquor and grocery market.

Over the years the city made frequent efforts to bring the property into compliance with various codes. Among the city's concerns were: unsafe structural elements, including dilapidated interior walls and ceilings; unpermitted construction; and numerous code violations, including unsanitary conditions, exposed electrical wiring, excessive amounts of trash, and criminal activities. The latter included two shootings at the property in 2016. In addition, the city found numerous emergency exit routes blocked by debris. The property lies in a residential neighborhood near both a park and an elementary school. According to the city, the conditions on the property were a blight in the community, driving down property values.

City inspectors inspected the property in July and August 2015 and uncovered significant health and safety violations. Based on these violations, the city issued a notice and order to repair or abate on August 19, 2015, ordering the violations to be remediated.

On September 22, 2015, the city became aware the property was being occupied as a residence and issued a notice to vacate. The notice to vacate stated "[n]o portion of the store shall be used for eating, living, sleeping purposes." Between September 2015 and February 2016, city inspectors inspected the property eight times, documented ongoing and worsening violations, and issued seven notices of violation.

The city issued a notice and order to repair or abate pursuant to Health and Safety Code section 17980 et seq. on April 14, 2016. The notice and order listed 31 violations and ordered the rehabilitation of the property to begin within 10 days and be completed within 30 days.

Singh failed to comply. An inspection of the property on May 25, 2016, revealed numerous violations and substandard conditions. The city issued a notice of violation ordering the correction of all remaining violations.

Subsequently, on June 23, 2016, the city filed an application for the appointment of a receiver, citing Health and Safety Code section 17980.7, subdivision (c)(4) and Code of Civil Procedure section 568.¹ The trial court granted the application and appointed the receiver, finding the city properly issued a notice to repair or abate, afforded Singh a reasonable time to rehabilitate, and the court possessed the authority to appoint a receiver to rehabilitate the property. The trial court signed a written order on July 19, 2016, confirming the appointment of the receiver. The following day, the city served Singh with notice of entry of the appointment order.

Singh filed a series of challenges to the trial court's appointment of the receiver. The trial court, on September 8, 2016, denied Singh's first motion to vacate the appointment order under section 473, subdivision (b), in which Singh claimed excusable neglect and surprise. The court found the order appointing the receiver on July 19, 2016, was signed long after the June 28, 2016 hearing on the application to appoint the receiver. The motion to vacate at issue was not filed until August 11, 2016, a full month and a half after the hearing on the application. The court concluded: "The City has been attempting to abate the nuisance at the subject property since 2014. Mr. Singh has ha[d] ample opportunity and time to fix up the property and or sell the property if he had the desire to do so. But he didn't. And an eviction or unlawful detainer is an expedited court proceeding, taking precedence over many other case types to move them through the system quickly under a type of preferential setting. Evictions of 'bad actor tenants' can be processed swiftly if the landlord files the proper paperwork with the court and actively

¹ All further statutory references are to the Code of Civil Procedure unless otherwise designated.

prosecutes the eviction. This wasn't timely pursued by Mr. Singh either. [¶] Without allegations of wrongdoing by the appointed receiver, of which the Court is unaware, there is no basis to vacate the appointment of receiver at this time."

In October 2016 Singh filed a petition for writ of mandate or prohibition in this court, arguing the trial court acted without jurisdiction. We denied the petition.

Subsequently, Singh filed a second motion to vacate the order in December 2016, challenging subject matter jurisdiction. The trial court denied the motion in January 2017. During oral argument, the court noted it "does not believe that it entered a void order. The Court also believes that its authority under [section] 473 is, in fact, discretionary in light of all of the circumstances of this particular case, the history of this particular case. And including the fact that there was no opposition to the motion to appoint receiver way back in July when this first came before the Court."

On June 16, 2017, the court receiver filed a motion for approval of the sale of real property, seeking court approval to sell the property to FD Partners, LLC, the same buyer Singh had previously selected. The trial court granted the motion, approving the sale of the property to FD Partners, LLC. Singh filed a notice of appeal on February 9, 2017.

DISCUSSION

At the outset, the city contends this appeal is moot because the trial court appointed the court's receiver to sell the property to FD Partners, LLC: "Since Appellant will no longer have any interest in the Nuisance Property as soon as the approved sale is finalized, this Appeal is moot and must be denied." The city concedes the sale of the property was not before the trial court when it denied Singh's motion to vacate on January 31, 2017, but argues we can affirm based on a theory not raised or relied on by the trial court. The city also claims Singh will not be prejudiced in any way if we deny the appeal, since the property will be sold to the buyer Singh had already selected.

The city's argument is problematic. A declaration of mootness would require a finding that a successful appeal could have no practical impact or provide the parties any

effective relief. (*City of Riverside v. Horspool* (2014) 223 Cal.App.4th 670, 682-683.)

Here, the trial court awarded the city \$127,588.33 in attorney fees as prevailing party. A reversal of the trial court would mean the city would no longer be the prevailing party entitled to attorney fees.

Be that as it may, this appeal is subject to a more fundamental challenge. An order denying a motion to set aside the appointment of a receiver is not an appealable order; we lack jurisdiction to consider this appeal. Singh contends the order was a final judgment appealable under section 904.1, subdivision (a)(7).²

Section 904.1 enumerates the kinds of trial court determinations that qualify for appellate review. Section 904.1, subdivision (a)(7) authorizes appeals from an order appointing a receiver. However, the statute is silent as to an appeal from an order denying a motion to set aside the appointment of a receiver. The California Supreme Court has filled this void.

The Supreme Court in *Raff v. Raff* (1964) 61 Cal.2d 514, 518, citing *Title Ins. & Trust Co. v. Calif. Etc. Co.* (1911) 159 Cal. 484, 487, pointed out that, “. . . no appeal was taken from the order appointing the receiver; and if defendant’s motion had been limited to seeking vacation of that order, the order denying his motion would not be appealable.” *Title Ins.* found such an appeal “amounts to no more than refusal by the court to reconsider an action already taken and the appeal should be from the original order,” and there is no statute “authoriz[ing] an appeal from an order refusing to vacate the appointment of a receiver.” (*Title Ins., supra*, 159 Cal. at pp. 487-488.) More recently, the court in *City and County of San Francisco v. Shers* (1995) 38 Cal.App.4th 1831,

² We deferred our consideration of the city’s motion to dismiss the appeal as moot to permit both sides an opportunity to orally argue the issue. We now conclude that we do not have jurisdiction to consider the appeal, thus rendering moot the motion to dismiss as moot.

1839, footnote 7, citing both *Raff* and *Title Ins.*, concluded: “If an appeal is not taken from the original order appointing a receiver, than that appeal is lost after the statutory time limit expires.”

Here, the order appointing the receiver was served on July 20, 2016. Under California Rules of Court, rule 8.104(a), Singh had 60 days to appeal the appointment of the receiver. Singh appealed the denial of his motion to set aside the appointment of the receiver on February 9, 2017, well beyond the 60-day limit to appeal the appointment of the receiver. Therefore, we lack jurisdiction to consider Singh’s appeal.

DISPOSITION

The appeal is dismissed for lack of jurisdiction. The city shall recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1) & (2).)

RAYE, P. J.

We concur:

BLEASE, J.

MURRAY, J.